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**IN THE SUPREME COURT  
STATE OF ARIZONA**

PETITION TO AMEND ER 3.8,  
ARIZONA RULES OF  
PROFESSIONAL CONDUCT  
(RULE 42, ARIZONA RULES OF  
SUPREME COURT)

Supreme Court No. R-11-0033

**COMMENT OF ARIZONA  
ATTORNEYS FOR CRIMINAL  
JUSTICE IN RESPONSE TO  
COURT'S AUGUST 28, 2013  
ORDER RE-OPENING  
COMMENTS**

Arizona Attorneys for Criminal Justice ("AACJ") respectfully submits this comment in response to the Court's August 28, 2013 order re-opening comments to the Petition to Amend Arizona Rule of Professional Responsibility 3.8. AACJ strongly supports the proposed amendments, but concurs with the recommendation of the State Bar of Arizona that the amendments should include directions that qualifying information be disclosed to the defense as well as the court and the prosecutorial authority in the jurisdiction of conviction. In the interests of justice, AACJ urges the Court to adopt these amendments and make them effective as soon as possible.

In all cases that a prosecutor learns of "new, credible, and material evidence creating a reasonable likelihood" that a defendant did not commit the crime for which he was convicted, the prosecutor should have the responsibility

1 to notify defense counsel or the indigent defense appointing authority in the  
2 jurisdiction of the conviction (in addition to notifying the court and the  
3 prosecutorial authority in that jurisdiction). The obligation to notify the defense  
4 should not be limited to situations in which the conviction occurred in the  
5 prosecutor's jurisdiction, as the current proposed amended ER 3.8(g) would limit  
6 it. This change to the proposed amendment would impose little additional burden  
7 on a prosecutor who learns new, credible, and material evidence, but would put  
8 the information in the hands of the person or agency with the best opportunity to  
9 put the information to use.

10 Likewise, a lawyer who learns of "credible and material evidence that  
11 creates a reasonable likelihood" that a defendant did not commit the crime for  
12 which he was convicted should also have the obligation to notify the defendant's  
13 counsel or the jurisdiction's indigent defense appointing authority. New proposed  
14 ER 3.10(a) unnecessarily limits the obligation to notifying the court and the  
15 prosecutorial authority in the jurisdiction of conviction.

16 More generally, concerns that have been raised by other commenters  
17 regarding possible additional burdens and inconsistencies that might flow from  
18 this rule change are exaggerated and inconsequential when balanced against the  
19 interests of justice served by ensuring that a person who is wrongfully convicted  
20 has the opportunity to secure his freedom. Particularly in this day of ready access  
21 to information, prosecutors (and other lawyers) will be able to identify easily the  
22 jurisdiction in which a conviction occurred, and thus the court, the prosecutorial  
23 agency, and the indigent defense appointing authority in that jurisdiction. This  
24 rule change will not cause the criminal justice system to grind to a halt, as some  
25 have suggested. Rather, it is wholly consistent with the State Bar's Lawyer's  
26 Creed of Professionalism, which urges lawyers to "strive to make our system of

27 . . .

28 . . .

1 justice work fairly.” Our profession and our criminal justice system can only be  
2 improved if the Court adopts the amendments.

3 RESPECTFULLY SUBMITTED this 25th day of October, 2013.

4 OSBORN MALEDON, P.A.

5  
6 By /s/ Kathleen E. Brody  
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11 COPY of the foregoing e-filed  
12 this 25th day of October, 2013, to:

13 COPY of the foregoing mailed this  
14 25th day of October, 2013, to:

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/s/ Patricia D. Palmer

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